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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,935

09/07/2007

Stefano Fais

113-06

8086

23713

7590

09/17/2009

GREENLEE WINNER AND SULLIVAN P C

4875 PEARL EAST CIRCLE

SUITE 200

BOULDER, CO 80301

EXAMINER

GREENE, IVAN A

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

09/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,935	Applicant(s) FAIS ET AL.	
	Examiner IVAN GREENE	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/19/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the claims

Claims 24-49 are currently pending. Claims 1-23 have been cancelled by applicant in a preliminary amendment.

Information Disclosure Statement

The information disclosure statement(s) submitted on 07/19/2007 was filed before the mailing date of the first office action on the merits. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the Examiner.

Priority

The U.S. effective filing date has been determined to be 02/14/2005, the filing date of the document PCT/EP2005/002250. The foreign priority date has been determined to be 02/12/2004, the filing date of document UK 0403165.4.

Rejections

Claim Rejections - 35 U.S.C. §§ 101 and 112, Second Paragraph

The following are quotations of 35 U.S.C. §§ 101 and 112, second paragraph, respectively, which form the basis of the claim rejections as set forth under this particular section of the Official Action:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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1. Claims 24-49 are rejected under 35 U.S.C. § 101 as being drawn to use claims, which are non-statutory process claims, as defined in 35 U.S.C. § 101. See, *Ex parte Dunki*, 153 USPQ 678 (Bd. App. 1967). In addition, claims 24-49 are also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, a claim is rendered indefinite when said claim merely recites a use without any active, positive steps delimiting how this use is actually practiced. See MPEP 2175.03(q). As a result, the Applicants are respectfully required to redraft the aforementioned use claims as statutory process claims that delimit active, positive steps on how to use a composition according to the invention as originally filed.
2. Applicant is advised that any amendment to the claims containing more than one statutory class of invention may result in a requirement for restriction.

Conclusion

Claims 24-49 have been examined on the merits. Claims 24-49 are rejected under 35 U.S.C. 112, second paragraph; and claims 24-49 is rejected under 35 U.S.C. 101. No claims allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IVAN GREENE whose telephone number is (571)270-5868. The examiner can normally be reached on Monday through Thursday 7AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

IVAN GREENE
Examiner, Art Unit 1619
/Ernst V Arnold/
Primary Examiner, Art Unit 1616